

**BEFORE THE
U.S. DEPARTMENT OF ENERGY
WASHINGTON, D.C. 20585**

In the Matter of:

Absocold Corporation,
Respondent

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Case Number: 2010-CE-1212

ORDER

Issued: October 13, 2010

By the General Counsel, U.S. Department of Energy:

1. In this Order, I adopt the attached Compromise Agreement entered into between the U.S. Department of Energy ("DOE") and Absocold Corporation ("Respondent"). The Compromise Agreement resolves the case initiated to pursue a civil penalty for violations of the compliance certification requirements at 10 C.F.R. § 430.62.
2. The DOE and Respondent have negotiated the terms of the Compromise Agreement that resolve this matter. A copy of the Compromise Agreement is attached hereto and incorporated by reference.
3. After reviewing the terms of the Compromise Agreement and evaluating the facts before me, I find that the public interest would be served by adopting the Compromise Agreement which completes the adjudication of the case.
4. Accordingly, **IT IS ORDERED** that, pursuant to Section 333 of the Energy Policy and Conservation Act, of 1975, as amended,¹ the Compromise Agreement attached to this Order **IS ADOPTED**.

U.S. DEPARTMENT OF ENERGY



Scott Blake Harris
General Counsel

¹ 42 U.S.C. § 6303.

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COMPROMISE AGREEMENT

The U.S. Department of Energy Office of the General Counsel initiated this action against Absocold Corporation ("Respondent") pursuant to 10 C.F.R. § 430.74 by Notice of Proposed Civil Penalty alleging that Respondent had failed to submit a certification report and compliance statement for residential refrigerators and refrigerator-freezers. Respondent, on behalf of itself and any parent, subsidiary, division or other related entity, and DOE, by their respective authorized representatives, hereby enter into this Compromise Agreement for the purpose of settling this civil penalty action.

I. DEFINITIONS

For the purposes of this Compromise Agreement, the following definitions shall apply:

- (a) "Act" means the Energy Policy and Conservation Act of 1975, as amended, 42 U.S.C. § 6291 *et seq.*
- (b) "Adopting Order" means an Order of the General Counsel adopting the terms of this Compromise Agreement without change, addition, deletion, or modification.
- (c) "DOE" means the U.S. Department of Energy.
- (d) "DOE Rules" means DOE's energy conservation regulations found in Title 10, Part 430, of the Code of Federal Regulations.
- (e) "Notice" means the Notice of Proposed Civil Penalty issued by DOE to Respondent on September 8, 2010, and captioned as case number 2010-CE-1212.
- (f) "Parties" means DOE and Respondent.
- (g) "Respondent" means Absocold Corporation.

II. RECITALS

WHEREAS, DOE, pursuant to 42 U.S.C. § 6291 *et seq.*, is responsible for the promulgation and enforcement of the energy conservation requirements set forth in DOE Rules; and

WHEREAS, DOE has promulgated energy conservation standards for residential refrigerators, freezers, and refrigerator-freezers at 10 C.F.R. § 430.32 and requires manufacturers to submit information and reports to ensure compliance with those standards at 10 C.F.R. § 430.62; and

WHEREAS, DOE, on September 7, 2010, initiated an action to assess a civil penalty for failure to certify covered products; and

WHEREAS, Respondent admits:

1. Respondent privately labels and distributes refrigerators and refrigerator-freezers, including but not limited to, basic models:

ARD492AS
ARD241A*
ARD1031F*
ARD482F*
ARD298C*
ARD565P*
ARD560M*
ARD361M
ARD251M*
AFD502M*

2. These products have been in distribution in the United States at least since September 7, 2009.
3. Sanyo E&E Corp., the manufacturer of refrigerators and refrigerator-freezers bearing Respondent's name listed in paragraph II(1) above, used an improper method for submitting certification information for these basic models on Absocold's behalf by sending them via email to an individual staff member of DOE's Building Technologies Program rather than by using the authorized method set forth in 10 C.F.R. § 430.62; and

WHEREAS, Sanyo E&E Corp. properly certified all of the basic models listed in Section II(1) above in accordance with applicable DOE regulations and the process set forth in 10 C.F.R. § 430.62 on September 28, 2010; and

WHEREAS, Respondent commits to certifying all of its covered products in accordance with applicable DOE regulations, forthcoming guidance on DOE Rules (including without limitation deadlines for compliance therewith), and the process set forth in 10 C.F.R. § 430.62; and

WHEREAS, DOE concludes that, given the efforts of the manufacturer of Respondent's branded models to fulfill its certification obligations, assessment of a civil penalty against Respondent is not warranted in this case; and

WHEREAS, DOE, as the agency charged with developing and administering a balanced and coordinated national energy policy, concludes that, in light of the circumstances, this Compromise Agreement properly balances the policies recognized in the Energy Policy and Conservation Act and is the appropriate way to resolve this matter; and

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements set forth below, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree as follows:

III. TERMS OF THE AGREEMENT

1. **Adopting Order.** The Parties agree that the provisions of this Compromise Agreement shall be subject to final approval by the General Counsel by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.
2. **Jurisdiction and Governing Law.** This Compromise Agreement is entered pursuant to DOE's authority to interpret and enforce its rules for energy efficiency and to enter into its own agreements interpreting and applying those rules. The Parties agree that DOE has jurisdiction over Respondent and primary jurisdiction over the matters contained in this Compromise Agreement and has the authority to enter into this Compromise Agreement.
3. **Effective Date.** The Parties agree that this Compromise Agreement shall become effective on the date on which the General Counsel issues the Adopting Order. Upon release, the Adopting Order and this Compromise Agreement shall have the same force and effect as any other Order of the General Counsel. Any violation of the Adopting Order or of the terms of this Compromise Agreement shall constitute a separate violation of an agency Order, entitling DOE to exercise any rights and remedies attendant to the enforcement of an Agency Order.
4. **Waivers.** Respondent agrees not to seek judicial review or otherwise contest or challenge the validity of the terms set out in this Compromise Agreement or the Notice associated with this case, including any right to judicial review that may be available to the Respondent with respect to the alleged violations settled pursuant to paragraph III(5) below. If either Party (or the United States on behalf of DOE) brings a judicial action to enforce the terms of this Compromise Agreement, neither Respondent nor DOE shall contest the validity of the Compromise Agreement, and Respondent waives any statutory right to a trial *de novo*. Respondent hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504, relating to the matters addressed in this Compromise Agreement. Nothing in this Compromise Agreement shall preclude Respondent from seeking any available remedy or relief for matters other than those set forth in Section III(5) below, including, without limitation, future alleged violations of the Act or DOE Rules, if any.

5. **Final Settlement.** The Parties agree and acknowledge that this Compromise Agreement shall constitute a final settlement between the Parties. This Compromise Agreement resolves all of the alleged violations set forth in the Notice, and only the alleged violations set forth in the Notice, including the alleged violations as set forth in the Notice concerning (i) the basic models listed in Section II(1) above, and (ii) basic models ARD204AB* and ARD104AB*.
6. **Merger.** This Compromise Agreement constitutes the entire agreement between the Parties and supersedes all previous understandings and agreements between the Parties relating to the subject matter hereof, whether oral or written.
7. **Modifications.** This Compromise Agreement cannot be modified without the advance written consent of both Parties.
8. **Invalidity.** In the event that this Compromise Agreement in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.
9. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Compromise Agreement.
10. **Counterparts.** This Compromise Agreement may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.



Timothy G. Lynch
Deputy General Counsel for
Litigation and Enforcement
U.S. Department of Energy

12 October 2010

Date



Mr. Edward D. Mulick
President and CEO
Absocold Corporation

October 12, 2010

Date